Kannaya & Anor v Teh Swee Eng

HIGH COURT (PENANG) — CIVIL APPEAL NO 11-50-90
SELVENTHIRANATHAN JC
30 NOVEMBER 1993

Civil Procedure *— Appeal — Appeal from subordinate court to High Court — Value of subject-matter — Whether value includes interest and costs — Courts of Judicature Act 1964 s 28(1)*

Civil Procedure *— Appeal — Questions of law — Whether appeal involved questions of fact only*

Statutory Interpretation *— Construction of statutes — Words used in other sections of same Act — Courts of Judicature Act 1964 ss 28(1) & 68(1)*

The respondent applied to have the appellants' appeal dismissed with costs on the grounds that the value of the subject-matter of the appeal was below RM10,000 and the appeal included questions of fact only and not questions of law which thus did not bring the appeal within the exception to s 28(1) of the Courts of Judicature Act 1964 ('the Act'). Counsel for the appellants argued that the reference to the value of the subject-matter in s 28(1) of the Act should include costs as well as interest and that questions of law were involved, on which the magistrate had misdirected herself.

Held, dismissing the appeal with costs:

(1) The value of the subject-matter referred to in s 28(1) of the Act does not include interest and costs. To interpret otherwise would be to place an unnecessary burden on a plaintiff who would have to decide in the first instance in which court to institute proceedings and further to guess as to when his case would be disposed of and its outcome. It cannot have been the intention of the legislature to have enacted this provision to invite the plaintiff to first indulge in a guessing game as to the ultimate outcome of his action for the purpose of deciding in which court to institute proceedings.

(2) The words '(exclusive of interest)' in s 68(1)(a) of the Act were added in 1987 to make that provision clearer because the words 'the value of the subject-matter' cannot be inclusive of interest. Interest will only be awarded should the plaintiff succeeds in his action and is not comprised in the value of the subject-matter. The court is further fortified in this interpretation of s 68(1)(a) of the Act by s 11 of the Civil Law Act 1956 which empowers the court to include in the sum for which judgment is given interest 'in the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment', and without which interest would not form part of the judgment sum.

A (3) The court was satisfied that all the grounds of appeal in the memorandum at best related to the application of the law to the facts and did not invoke any question of law alone for decision.

[Bahasa Malaysia summary

B Responden telah memohon supaya rayuan perayu dibuang dengan kos atas alasan bahawa nilai isi perkara rayuan itu kurang daripada RM10,000 dan rayuan itu melibatkan soalan mengenai fakta sahaja dan bukan soalan mengenai undang-undang dan oleh itu rayuan itu tidak termasuk dalam kekecualian kepada s 28(1) Akta Mahkamah Kehakiman 1964 ('Akta itu'). Peguambela untuk perayu menghujahkan C bahawa rujukan kepada nilai isi perkara di dalam s 28(1) Akta itu seharusnya termasuk kos dan faedah dan bahawa soalan mengenai undang-undang terlibat, mengenai mana majistret telah salah mengarah dirinya.

D **Diputuskan**, menolak rayuan dengan kos:

(1) Nilai isi perkara yang dirujuk di dalam s 28(1) Akta itu termasuk faedah dan kos. Untuk mentakrifnya dengan cara lain akan meletakkan suatu beban yang keterlaluan di atas seseorang plaintif yang terpaksa membuat keputusan terlebih dahulu mengenai E mahkamah mana beliau seharusnya memulakan prosiding dan selanjutnya membuat tekaan mengenai bila kesnya akan didengar dan keputusannya. Adalah tidak mungkin bahawa badan perundangan telah menggubal peruntukan ini supaya menjemput plaintif berteka-teki tentang hasil tindakannya untuk tujuan memutuskan mahkamah di mana prosiding itu patut dimulakan.

F (2) Perkataan '(exclusive of interest)' di dalam s 68(1)(a) Akta itu telah ditambah pada tahun 1987 untuk membuat peruntukan itu lebih jelas kerana perkataan 'the value of the subject-matter' tidak termasuk faedah. Faedah hanya boleh diawardkan jika plaintif berjaya di dalam tindakannya dan tidak termasuk dalam nilai isi G perkara. Tafsiran mahkamah mengenai s 68(1)(a) Akta itu diperkuatkan lagi oleh s 11 Akta Undang-Undang Sivil 1956 yang memberi mahkamah kuasa untuk memasukkan faedah atas keseluruhan atau sebahagian hutang atau ganti rugi untuk keseluruhan atau sebahagian tempoh di antara tarikh bila kausa tindakan timbul dan tarikh penghakiman ('in the whole or any H part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment'), kepada jumlah untuk mana penghakiman diberikan, dan tanpa mana faedah tidak akan membentuk sebahagian daripada jumlah penghakiman.

I (3) Mahkamah berpuas hati bahawa alasan rayuan di dalam memorandum sebaik-baiknya berkenaan dengan pemakaian undang-undang kepada fakta dan tidak merujuk sebarang soalan undang-undang sahaja untuk diputuskan.]

Case referred to

1 *Foo Sey Koh & Ors v Chua Seng Seng & Ors* [1986] 1 MLJ 501 (folld)

Legislation referred to

Civil Law Act 1956 s 11
Courts of Judicature Act 1964 ss 28(1), 68(1)(a)

N Patkunam (*N Patkunam & Co*) for the appellants.
M Athimulan (*Kumar, Sitham & Co*) for the respondents.

Selventhiranathan JC: The respondent (the plaintiff in the court below) made this application for the appeal by the appellants (the defendants in the court below) to be dismissed with costs on the ground that the value of the subject-matter of the appeal was below RM10,000 and that the appeal involved questions of fact only and not questions of law which therefore did not bring the appeal within the exception to s 28(1) of the Courts of Judicature Act 1964 ('the Act'). That section provides that 'no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less *except on a question of law*' (emphasis added).

The affidavit in support of the application stated that the claim of the respondent arose out of an accident on 13 December 1983 while she was a passenger on motor bus No PK 8985 which was driven by the first appellant and of which the second appellant was the registered owner. As a result of the negligence of the first appellant in the driving of the bus, the respondent was thrown out of the bus and suffered injuries. She filed proceedings on 8 April 1985 at the magistrates' court whereby she claimed damages for her injuries. The case proceeded to trial and was concluded on 24 May 1990 when the learned magistrate found the first defendant (the first appellant) 100% liable and awarded the plaintiff (the respondent) damages of RM9,007.50 together with interest and costs. As the appellants were dissatisfied with the decision of the learned magistrate, they filed their notice of appeal on 31 May 1990.

It was further deposed in the affidavit that a perusal of the memorandum of appeal herein and the grounds of judgment of the learned magistrate showed that the latter based her decision solely on questions of fact and that there was no question of law which arose. It was also deposed that as the judgment sum was below RM10,000 and as the appeal was in reality on questions of fact and not on questions of law, it should be dismissed with costs.

The affidavit-in-reply filed on behalf of the appellants was to the effect that the memorandum of appeal showed that questions of law were involved. Furthermore, it was contended that the value of the subject-matter was more than RM10,000.

A Encik N Athimulan for the respondent submitted that there was no right of appeal in this case by virtue of s 28(1) of the Act as the award of the learned magistrate was for a sum below RM10,000. The right of appeal would only arise if a question of law was involved and it was submitted that there was no question of law alone involved in the appeal. The learned B magistrate made findings of fact which did not involve any question of law. He submitted that the motion by the respondent should be allowed with costs.

Encik N Patkunam submitted at length on behalf of the appellants and put in copious authorities. He contended that the reference to the value of C the subject-mater in s 28(1) of the Act should include costs as well as interest which would take the total sum awarded to above RM15,000. The appellants were therefore entitled to appeal. He relied particularly on the case of *Foo Sey Koh & Ors v Chua Seng Seng & Ors.*[1] He also submitted at length to substantiate his contention that questions of law were involved and that the learned magistrate had misdirected herself on the law.

D I shall deal first with the question whether in computing the value of the subject-matter the amount of RM10,000 specified in s 28(1) of the Act should include interest as well as costs. That section has been set out at the beginning of this judgment. But it bears repetition here in toto:

> E Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

For the purposes of comparison of the provision in respect of appeals from F the High Court to the Supreme Court, s 68(1)(a) of the Act reads:

> No appeal shall be brought to the Supreme Court in any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than one hundred thousand ringgit, except with the leave of the Supreme Court or a judge of the High Court; ...

G It will be immediately noticed that for the purpose of computing the value of the subject-matter of the claim in s 68(1)(a) of the Act, interest is excluded whereas s 28(1) of the Act is silent in respect of interest. It was contended on behalf of the appellants that there was therefore an intention to include interest in computing the value of the subject-matter in s 28(1) H of the Act. Reference was also made to s 11 of the Civil Law Act 1956 which provides that in any proceedings tried in any court for the recovery of any debt or damages the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole I or any part of the period between the date when the cause of action arose and the date of judgment. (There is a proviso to s 11 which is not applicable for our purposes.)

In my view, the words 'the amount in dispute or the value of the subject-matter is ten thousand ringgit or less' in s 28(1) of the Act do not include interest and costs. To interpret otherwise would be to place an unnecessary burden on a plaintiff who will have to decide in the first instance in which court to institute proceedings and further to guess as to when his case would be disposed of and as to its outcome. This is because interest and costs will increase with the protraction of the proceedings at first instance itself and they will only be awarded if the plaintiff is successful in the end. If he is not successful, and if he were to have instituted the proceedings in a higher court, he will be burdened with having to pay higher costs. The same would apply in the case of an unsuccessful defendant who is sued in a court higher than that in which he ought to have been sued, if interest and costs were included in the computation of the value of the subject-matter. It cannot have been the intention of the legislature to have enacted this provision to invite the plaintiff to first indulge in a guessing game as to the ultimate outcome of his action for the purpose of deciding in which court to institute proceedings.

Section 68(1)(a) of the Act excludes interest in the computation of the value of the subject-matter for the purposes of that section. The exclusion of interest in that section was introduced by Act A670 which came into force on 22 May 1987. The history of that section before that amendment does not show whether interest was to be included or excluded in the computation of the value of the subject-matter of the claim. The pre-1987 amendment language of s 68(1)(a) was very much akin to the present language of s 28(1) insofar as reference is made to the amount in dispute or the value of the subject-matter. However, I would interpret the pre-1987 amendment s 68(1)(a) to mean that interest is to be excluded in the computation of the value of the subject-matter. In my view, the words '(exclusive of interest)' were added in 1987 to make that provision clearer because the words 'the value of the subject-matter' cannot be inclusive of interest. Interest will only be awarded should the plaintiff succeed in his action and is not comprised in the value of the subject-matter. It is awarded only to a successful plaintiff to compensate him for being deprived of the use of the judgment sum prior to the adjudication of the claim. The words '(exclusive of interest)' in s 68(1)(a) must be construed as having been inserted *ex abundanti cautela*, having regard to the legislative history of that provision. I am further fortified in this interpretation by s 11 of the Civil Law Act 1956 which empowers the court *to include 'in the sum for which judgment is given* interest ... on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment' (emphasis added). Without this provision, interest will not form part of the judgment sum. Therefore, interest is not constituted or comprised in the whole or any part of the debt or damages for which judgment is given, the latter being based upon the cause of action.

A I find further support for the construction of s 28(1) which I espouse in the following passage in the judgment of Shankar J in *Foo Sey Koh*[1] at p 503 of the report:

> It is to be noted that the period from which the interest is to run, and the rate at which the interest is to be given, in a case such as this, is purely discretionary. To
B expect a plaintiff to be able to compute what the interest element is going to be, working on such imponderables, and thereby to determine in which court he shall file his action, could not, in my respectful view, have been the intention of the law. This, therefore, is a case where the plaintiff should have initiated his action in the sessions court since the debt which he was suing to recover was less than RM25,000. What interest the sessions court would have awarded was of
C course entirely a matter for it upon the merits of the case.

I am afraid that the very authority the appellants relied on militates against their cause.

I also found that the second ground of objection to the appeal by learned counsel for the respondent has merit. I have perused the memorandum of
D appeal in detail and compared it with the grounds of judgment of the learned magistrate. Having done so, I am satisfied that all the grounds of appeal in the memorandum at best relate to the application of the law to the facts and do not involve any question of law alone for decision. Labelling the grounds of appeal as involving questions of law does not metamorphose what are essentially questions of fact into questions of law. The substance
E is what matters, not the label.

For example, the first and second grounds of appeal read as follows:

> (1) The learned magistrate erred in law when she held that the issue in the case was whether the plaintiff was standing or seated when she fell out of the bus. The learned magistrate failed to appreciate or consider that the issue was
F whether the first defendant was negligent in the way he drove the bus which caused the plaintiff to fall out although she was seated in the bus as alleged by the plaintiff or whether the plaintiff was solely at fault in standing on the steps of the bus while it was negotiating the roundabout which caused her to fall out although there was no fault on the part of the first defendant as alleged by the defendants.
>
> G (2) The learned magistrate erred in law when, although she failed to hold that any particulars of negligence had been proved against the defendant, she went on to hold that, since the plaintiff was seated inside the bus when she fell out of it, the first defendant failed in his duty to the plaintiff and that, therefore, the defendants were liable to the plaintiff.

The appellants have labelled these grounds as involving questions of law
H but to my mind both these grounds involve questions of fact which were decided by the learned magistrate after having heard the witnesses. Whether to accept or reject their evidence is a matter clearly within her province as long as she had valid reasons to do so. A scrutiny of her grounds of judgment clearly show that she did apply her mind to the matter and
I advanced cogent reasons for accepting or rejecting the evidence, and her reasons therefor cannot be in any way said to be so perverse as to justify interference by an appellate court.

Therefore the application of the respondent for the appeal to be dismissed on the two grounds advanced, ie that the value of the subject-matter was less than RM10,000 and that only questions of fact and not questions of law were involved, succeeds. The appeal is dismissed with costs. The sum lodged in court as security for the costs of the appeal is to be paid to the respondent towards taxed costs.

Appeal dismissed.

Reported by Kevin Ooi